

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Sections 309(j) and 337)	WT Docket No. 99-87
Of the Communications Act of 1934, as amended)	
)	
Promotion of Spectrum Efficient Technologies)	RM-9332
On Certain Part 90 Frequencies)	

To: The Commission

PETITION FOR STAY

The Association of American Railroads (“AAR”), by its undersigned counsel and pursuant to Section 1.429(k) of the Commission’s rules, hereby requests the Commission to stay the effectiveness of the rules adopted in the Second Report and Order in the above-captioned proceeding, FCC 03-34, released February 25, 2003 (“Second Report and Order”), and published in the Federal Register on July 17, 2003.^{1/} In support, the following is shown:

AAR has filed on this date a Petition for Reconsideration of the Second Report and Order with respect to three interim dates governing the transition from the use of wideband (25 kHz) radios to narrowband (12.5 kHz) radios in the Private Land Mobile Radio Service.^{2/}

^{1/} 68 Fed. Reg. 42296-42314, July 17, 2003.

^{2/} AAR is not seeking reconsideration of the final deadline of January 1, 2013, established by the Commission in the Second Report and Order for completion of the conversion to narrowband equipment by non-public safety licensees.

In its Petition for Reconsideration, AAR demonstrated that: (1) owing to the size, complexity and need for interoperability among the mobile radio networks operated by the railroads in the United States, the railroad industry's transition from wideband to narrowband technology must occur on a coordinated, industry-wide basis, and such transition, therefore, by necessity will be lengthy and complex; (2) the interim deadlines adopted by the Commission, starting on January 13, 2004, will deprive the railroad industry of the ability to deploy "backward compatible" equipment (i.e., dual bandwidth radios), thereby forcing the railroads to operate in "mixed mode" as new equipment is introduced during the transition period;^{3/} and (3) "mixed mode" operations have the potential for degrading the quality and intelligibility of voice communications, as shown by a recent study conducted for the Federal Railroad Administration.^{4/}

Section 1.429(k) of the Commission's rules states that "for good cause shown, the Commission may stay the effective date of a rule pending a decision on a petition for reconsideration."^{5/} AAR respectfully submits that there is "good cause" for the Commission to enter a stay under the circumstances present here. It is unlikely that the Commission will have had the opportunity to render decision on the merits of AAR's Petition for Reconsideration prior to January 13, 2004 (the date on which, under the rule adopted in the Second Report and Order, dual bandwidth radios may no longer be deployed for new or modified stations). Thus, in the absence of a stay, the railroad

^{3/} Under "mixed mode" operation, for example, a narrowband base station radio would receive a wideband signal from a mobile radio aboard a locomotive, and the wideband locomotive radio would receive a narrowband signal from the base station.

^{4/} AAR Petition for Reconsideration, at 8-9, and Exhibit B thereto at 3-4, 13.

^{5/} 47 C.F.R. ¶ 1.429(k).

industry will be forced into “mixed mode” operations— with the consequent potential for degraded communications – as early as January 2004. In light of the important safety implications of mobile radio use in the railroad industry,⁶ such a result clearly would not be in the public interest.

Wherefore, for the foregoing reasons, AAR respectfully requests the Commission to stay the effectiveness of the rules adopted in the Second Report and Order pending the issuance of a decision on AAR’s Petition for Reconsideration.

Respectfully submitted,

ASSOCIATION OF AMERICAN RAILROADS

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^{6/} The link between railroad safety and the use of radio was reiterated by Congress in the 1992 Rail Safety Enforcement Act, 49 U.S.C. § 20103(a), which directed the Secretary of Transportation (through the Federal Railroad Administration) to evaluate the use of radio for safety-related purposes in the rail industry and to adopt regulations, as appropriate. *See, e.g.*, 49 C.F.R. § 220.9 *et seq.* (FRA rules prescribing radio communications requirements for locomotives, right-of-way crews, etc.). *See also*, 49 C.F.R. § 232.19 *et seq.* (FRA rules governing operation of radio-equipped one-way and two-way “end-of-train” devices for monitoring and activating brake systems aboard trains).